

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Definition of an)
Over-the-Air Signal of Grade B)
Intensity for Purposes of the)
Satellite Home Viewer Act)

RM-9335

**COMMENTS IN SUPPORT OF THE EMERGENCY PETITION FOR
RULEMAKING OF THE NATIONAL RURAL TELECOMMUNICATIONS
COOPERATIVE**

DSI Systems, Inc., d/b/a National Programming Service ("NPS") is an Indianapolis, IN based packager of satellite television programming for C-band home satellite dish ("HSD") consumers. NPS files these comments in support of the Emergency Petition For Rulemaking of the National Rural Telecommunications Cooperative filed with the Commission on July 8, 1998.

NPS is the nation's largest independent distributor of satellite programming to the C-band HSD market. It currently serves several hundred thousand HSD households in every state in the country. Nearly 100,000 of those households rely on their satellite systems for the reception of network signals through NPS, acting as a distributor of the network signals of PrimeTime 24 ("PT24").

As a result of the preliminary injunction issued by a federal court in Miami, FL¹, more than one million total HSD consumers stand to lose access to network signals, including many of the customers of NPS. In the majority of those situations, the loss of

¹ See Supplemental Order Granting Plaintiffs' Motion for Preliminary Injunction, CBS, Inc., et al. v. PrimeTime 24 Joint Venture, Case No. 96-3650 - CIV-Nesbitt, United States District Court for the Southern District of Florida.

signals for those consumers will result from an overly-broad and incorrect application of the Satellite Home Viewer Act ("SHVA") and the network eligibility requirements thereunder.

The definition of "unserved household" and "Grade B" restrictions as interpreted by the Miami Court are, as stated in the NRTC Petition,

incomprehensible to consumers, immeasurable as a practical matter, and anti-competitive. They have the effect of preventing at least 50% of the households at the "Grade B" contour from receiving network signals by satellite even though these households cannot receive an acceptable over-the-air picture from their local affiliates. They frustrate the ability of the satellite industry to compete effectively against the cable industry and unnecessarily restrict consumer choice in selecting video programming providers.²

If direct-to-home satellite service (at both Ku-band and C-band) is to flourish and evolve into the true competitor that both the Commission and congress have sought for many years, it is imperative that the Commission formulate and implement a "Grade B" signal definition which comports with the intent and purpose of congress in enacting the network compulsory license provisions of SHVA. Since the passage of the Act in 1988, both the broadcasters and the satellite industry have been frustrated by their inability to readily determine which households are or are not eligible for the reception of distant network signals. Stated simply, the existing Grade B standard *does not work* as a standard for SHVA eligibility; it is time for the Commission to act and ensure that every household in the United States has the ability to receive a good quality signal for every network, whether it be off-air or satellite reception. Presently, that ability does not exist.

The Order of the Miami Court will, in its application, blanket every household within the current Grade B contour and force termination of satellite delivered network signals to those households, regardless of whether any particular affected household receives a true Grade B quality signal. Exception to the Court-ordered termination of

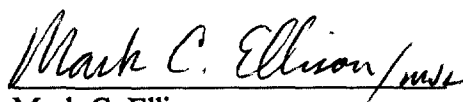
² NRTC Petition at p. 2.

service will be available only if (a) each of the desired network affiliates grants a waiver or (b) a test is conducted at the individual household level in advance to determine eligibility. Hundreds of thousands of households in the current Grade B contour which are not adequately served by their local affiliate and which currently depend on satellite delivery for access to the networks will, commencing on October 8, 1998, lose that access if the Commission fails to act.

NPS strongly supports the NRTC Petition and urges the Commission to adopt a pro-consumer definition of "Grade B" for purposes of the "unserved household" definition in the SHVA. Grade B should be defined, for purposes of interpreting the SHVA, as a contour in which the entire base of household, using readily available off-air equipment is capable of receiving network affiliates one hundred percent of the time. Using such a definition will fulfill the purpose of SHVA and ensure that all American households have fair and adequate access to network and that satellite direct broadcasting will thrive and serve as a viable competitor in the video distribution marketplace.

On behalf of NPS, the undersigned respectfully requests that the Commission grant the Petition of NRTC and initiate a rulemaking to redefine Grade B for purposes of subscriber eligibility under SHVA.

Respectfully submitted,

A handwritten signature in dark ink, reading "Mark C. Ellison" followed by a stylized flourish or initials.

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